IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8938 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATBHAI HARGOVINDBHAI BAROT - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HN BRAHMBHATT for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2007

ORAL JUDGMENT

1. Rule. Shri M.R.Mengde, learned APP waives service of rule on behalf of the respondent – State.

2. Pursuant to the order passed by this Court dated 7.8.2007 and the notice issued by this Court, respondent No.2 – original complainant is personally present in the Court.

3. Heard the learned advocate appearing for the applicant and respondent No.2 – Amrutbhai Hirabhai Patel – party-in-person.

4. Present application has been filed by the applicant – original accused No.2 to quash and set aside the complaint being CR No.I – 82 of 2007 registered at Idar Police Station against him.

5. It appears from the record that the complaint being CR No. I – 82 of 2007 is filed by the respondent No.2 against the applicant on 11.6.2007 for the offence under sections 363, 366, 376 and 114 of the I.P.C. alleging inter alia that the applicant has kidnapped his daughter by giving false promise of marriage.

Being aggrieved and dissatisfied with the same, the applicant has preferred present application to quash and set aside the complaint by submitting that the applicant has not committed any offence as alleged under sections 363, 366, 376 and 114 of the I.P.C. and the daughter of the respondent No.2 who is now wife of the applicant has gone voluntarily with the applicant and even she has made a statement to that effect before the Division Bench of this Court on 3.7.2007 in Special Criminal Application No. 1200 of 2007. Therefore, it is requested to quash the impugned complaint / F.I.R.

6. Respondent No.2 – party-in-person, father of the girl, however, submitted that in their society such type of marriage are not acceptable and the birth date of the applicant was 2.12.1989. Therefore, it is requested by him to dismiss the complaint.

7. Considering the averments and allegations in the

impugned complaint, the allegations against the applicant are for the offence under sections 363, 366, 376 and 114 of the I.P.C. alleging inter alia that the applicant has kidnapped his daughter. However, in habeas corpus petition in Special Criminal Application No. 1200 of 2007 the statement of the daughter of the respondent No.2 – Alpaben was recorded by the Division Bench of this Court on 3.7.2007 and on recording the statement of the girl – Alpaben, the said petition was disposed of. The order passed by the Division Bench of this Court dated 3.7.2007 in Special Criminal Application No. 1200 of 2007 reads as under :-

"Alpaben, daughter of Amrutbhai Hirabhai Patel, has been produced in court by the police today from Nari Suraksha Kendra, Himmatnagar. Her statements are recorded on oath.

In her statement, she claimed to be of 19 years of age and she got married with Bharatkumar Hargovandas Barot on 07.06.2007 at Limbhoi.

During the course of arguments, it is brought to our notice that as per medical

certificate she is not of 18 years age. However, in the school leaving certificate her date of birth has been shown to be 01.05.1989, thereby she has completed 18 years of age.

It is also brought to our notice that she has been sent to Nari Suraksha Kendra, in pursuance of the directions of the Judicial Magistrate (First Class), Idar, in Criminal Complaint (I C.R. No.82/2007) filed by her father.

Considering her age shown in the school certificate and her physical appearance and also her desire to live with her husband, we are inclined to give her liberty to go to her husband's house, especially, when no danger to her life has been shown, in case she goes with her husband.

No justification has been shown why she should remain in the Nari Suraksha Kendra at Himmatnagar. Therefore, we are of the view that she should live with her husband, as desired by her.

An apprehension has been shown that if she is sent to her husband, her parents may cause harm to her or her husband or parents of husband, including physical assault. Therefore, the petitioner prayed for police help in case her parents harass her or her in-laws on account of her marriage with

Bharatkumar Hargovandas Barot.

The concerned police station in-charge is, directed to give the girl-Alpaben police help as and when needed.

With the above directions, petition stands disposed of."

8. Considering above and the statement of the girl – Alpaben, who is now wife of the applicant, it cannot be said that the applicant has committed any offence as alleged under sections 363, 366, 376 and 114 of the I.P.C. It appears that the applicant has got married with the daughter of the respondent No.2 and now they are residing happily. Under the circumstances, to continue with the criminal proceedings against the applicant would be unnecessarily harassment to the applicant.

9. For the reasons stated above, impugned complaint / FIR being CR No. I – 82 of 2007 registered at Idar Police Station is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

(M.R.Shah, J.)

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